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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,997

04/17/2006

Richard L. Schuster

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,997

Applicant(s)

SCHUSTER, RICHARD L.

Examiner

Gary E. Elkins

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4.5.7-20.36-39 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4.5.7-20.36-39 and 41-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date 20090120
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 5, 7, 8, 12-15, 36-39, 41, 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al (US 5,350,109) in view of Wilson (US 5,072,876), either Reeser (US 2,568,204) or Negelen (US 6,250,542), and either Sutherland et al (US 6,112,977) or Skolik et al (US 6,170,741). Brown et al discloses all structure of the claimed carton except an insert or inserts having corresponding apertures matching the end apertures in the carton and, with respect to claims 14 and 15, formation of insert with fold lines formed with apertures. Wilson teaches that it is known to reinforce end handle apertures in a carton using an underlying panel insert (36, 58) and, with respect to claims 14 and 15, to form the foldlines in the insert using perforations. Each of Sutherland et al and Skolik et al teaches that it is known to form an insert as a separate element secured to the carton. Each of Reeser and Negelen teaches that desirability of making handle apertures in the sides of a container using three plies. It would have been obvious to reinforce the end wall handle apertures in Brown et al with an insert or inserts as taught by Wilson and to form the insert or inserts as a separate element(s) as taught by either Sutherland et al or Skolik et al as a matter of combining the elements according to known methods to yield the predictable results. See KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742; 82 USPQ2d 1385, 1396 (2007). It would further have been obvious to maintain the partial

handle apertures in the end panel flaps 25 and 27 in modified Brown et al in view of the teaching in either Reeser or Negelen as a way of forming a three ply handle structure to reinforce the handle. With respect to claims 14 and 15, it would further have been obvious to form the insert in modified Brown et al using perforated foldlines as is further taught by Wilson to allow less stress on the foldlines during folding of the two plies and easier folding of the insert.

3. Claims 36-39, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al in view of Wilson, either Reeser or Negelen, and JP '243 (Japan 47-7243). Brown et al discloses all structure of the claimed carton except inserts having corresponding apertures matching the end apertures in the carton. Wilson teaches that it is known to reinforce end handle apertures in a carton using an underlying panel insert (36, 58). JP'243 teaches that it is known to form the reinforcement for end panel apertures using underlying separate inserts for each handle aperture. Each of Reeser and Negelen teaches the desirability of making handle apertures in the sides of containers using three plies. It would have been obvious to reinforce the end wall handle apertures in Brown et al with an insert as taught by Wilson and to form the insert as a plurality of separate inserts as taught by JP '243 as a matter of combining the elements according to known methods to yield the predictable results. See KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742; 82 USPQ2d 1385, 1396 (2007). It would further have been obvious to maintain the partial handle apertures in the end panel flaps 25 and 27 in modified Brown et al in view of the teaching in either Reeser or Negelen as a way of forming a three ply handle structure to reinforce the handle.

4. Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 8 and 15, respectively above, and further in view of Sherman et al (US

Art Unit: 3782

3,116,229). Modified Brown et al fails to evidence tear lines in the top and side panels form a dispenser flap. Sherman et al teaches that it is known to make a carton with a perforated tear out area to facilitate easier opening of the top and dispensing of the contents. It would have been obvious to make the top of the carton in modified Brown et al with a tear out area as taught by Sherman et al to facilitate easier access to the contents.

5. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 42 in either paragraph 3 or 4 above, and further in view of Sherman et al (US 3,116,229). Modified Brown et al fails to evidence tear lines in the top and side panels form a dispenser flap. Sherman et al teaches that it is known to make a carton with a perforated tear out area to facilitate easier opening of the top and dispensing of the contents. It would have been obvious to make the top of the carton in modified Brown et al with a tear out area as taught by Sherman et al to facilitate easier access to the contents.

6. Claims 10, 11 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 9 and 16 above, and further in view of Gilchrist (US 3,533,549). Modified Brown et al fails to evidence formation of the perforated area with two sections. Gilchrist teaches that it is known to make a perforated tear out area in two sections with a finger engagement area there between. It would have been obvious to form the perforated tear out area in modified Brown et al in two sections as taught by Gilchrist to allow selective access to one side or to the entire top of the carton.

7. Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 43 above, and further in view of Gilchrist (US 3,533,549). Modified Brown et al fails to evidence formation of the perforated area with two sections. Gilchrist

teaches that it is known to make a perforated tear out area in two sections with a finger engagement area there between. It would have been obvious to form the perforated tear out area in modified Brown et al in two sections as taught by Gilchrist to allow selective access to one side or to the entire top of the carton.

Response to Arguments

8. Applicant's arguments filed 20 January 2009 have been fully considered but they are not persuasive.

The remarks assert that none of the inserts evidenced by the secondary references suggest providing the handle flap structure as is being used by Brown et al, i.e. if one used the handle construction suggested by Wilson, it would preclude use of the handle aperture flaps as in Brown et al since the flaps 25, 27 would not be formed with partial handle apertures (see flaps 54 in Wilson).

In response, this line of reasoning is not persuasive for the following reasons: (1) The new grounds of rejection are considered to suggest retention of the partial flaps as part of a three ply handle construction. Especial note is made of the three ply end wall handle structure shown in Reeser where one of the plies is formed as partial flaps (26). (2) The prior art to Wilson (as well as several other secondary references) suggests that formation of handle openings without folded flaps is knowledge that is clearly present within the art. It is believed that elimination of the part and its function, if not needed, is within the level of skill in this art. One of ordinary skill in this art would not have been led away from the combination as a result of whether the handle flaps of Brown et al were to be used or not. The box of Brown et al is useful to package contents and to be carried using the handle flaps regardless of whether the additional advantage

of the handle flaps is present or not. Obviousness is a determination of whether the claimed invention would have been obvious to one of ordinary skill in this art having knowledge of all the prior art as opposed to the inventors in the Brown et al reference. (3) In light of the newly applied rejection above, it is believed that the handle flaps as in Brown et al could be used in the combination handle, if desired.

The remarks are otherwise moot in view of the new grounds of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

/Gary E. Elkins/
Primary Examiner, Art Unit 3782